



2

1a. REPORT SECURITY CLASSIFICATION Unclassified			3. DISTRIBUTION / AVAILABILITY OF REPORT Distribution Statement A: Approved for public release; distribution is unlimited.		
2a. SECURITY CLASSIFICATION AUTHORITY N/A			4. MONITORING ORGANIZATION REPORT NUMBER(S) Same		
2b. DECLASSIFICATION / DOWNGRADING SCHEDULE N/A			5. MONITORING ORGANIZATION REPORT NUMBER(S) Same		
4. PERFORMING ORGANIZATION REPORT NUMBER(S) NDU-ICAF-93- F26			5. MONITORING ORGANIZATION REPORT NUMBER(S) Same		
6a. NAME OF PERFORMING ORGANIZATION Industrial College of the Armed Forces		6b. OFFICE SYMBOL (If applicable) ICAF-FAP		7a. NAME OF MONITORING ORGANIZATION National Defense University	
6c. ADDRESS (City, State, and ZIP Code) Fort Lesley J. McNair Washington, D.C. 20319-6000		7b. ADDRESS (City, State, and ZIP Code) Fort Lesley J. McNair Washington, D.C. 20319-6000			
8a. NAME OF FUNDING / SPONSORING ORGANIZATION		8b. OFFICE SYMBOL (If applicable)		9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER	
8c. ADDRESS (City, State, and ZIP Code)		10. SOURCE OF FUNDING NUMBERS			
		PROGRAM ELEMENT NO.		PROJECT NO.	TASK NO.
					WORK UNIT ACCESSION NO.
11. TITLE (Include Security Classification) <i>Origins of the 1986 Philippine Constitution</i>					
12. PERSONAL AUTHOR(S) <i>Mark Stevens</i>					
13a. TYPE OF REPORT Research		13b. TIME COVERED FROM <i>Aug 92</i> TO <i>Apr 93</i>		14. DATE OF REPORT (Year, Month, Day) April 1993	
				15. PAGE COUNT <i>35</i>	
16. SUPPLEMENTARY NOTATION					
17. COSATI CODES			18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number)		
FIELD	GROUP	SUB-GROUP			
19. ABSTRACT (Continue on reverse if necessary and identify by block number)  SEE ATTACHED  <b>DTIC ELECTE</b> <b>S MAR 15 1994 B D</b>					
20. DISTRIBUTION / AVAILABILITY OF ABSTRACT <input checked="" type="checkbox"/> UNCLASSIFIED/UNLIMITED <input checked="" type="checkbox"/> SAME AS RPT. <input type="checkbox"/> DTIC USERS			21. ABSTRACT SECURITY CLASSIFICATION Unclassified		
22a. NAME OF RESPONSIBLE INDIVIDUAL Judy Clark			22b. TELEPHONE (Include Area Code) (202) 475-1889		22c. OFFICE SYMBOL ICAF-FAP

## **ABSTRACT**

### **Origins of the 1986 Philippine Constitution**

**Mark Stevens  
Department of State**

Traces political history of the Philippines, from pre-colonial times to present day. Describes developed concepts of law and order and organized society long before Spanish conquest in 1512. Details continued development during 300 years of Spanish rule. Describes effect of American rule on development of democratic principles during first half of this century. Finally, it describes the despotic reign of President Marcos, his eventual overthrow, and the successful efforts of the Aquino administration to draft and ratify 1986 Constitution. Conclusion heralds maturing of democracy in the Philippines and predicts social and economic success will surely result.

**1993  
Executive Research Project  
F26**

# **Origins of the 1986 Philippine Constitution**

**Mark Stevens  
Department of State**

*Faculty Research Advisor*  
**Dr. Joseph E. Goldberg**



**The Industrial College of the Armed Forces  
National Defense University  
Fort McNair, Washington, D.C. 20319-6000**

**94-8-10-110**

35 pg

**94-08044**



**1993  
Executive Research Project  
F26**

# **Origins of the 1986 Philippine Constitution**

**Mark Stevens  
Department of State**

*Faculty Research Advisor*  
**Dr. Joseph E. Goldberg**



**The Industrial College of the Armed Forces  
National Defense University  
Fort McNair, Washington, D.C. 20319-6000**

## DISCLAIMER

This research report represents the views of the author and does not necessarily reflect the official opinion of the Industrial College of the Armed Forces, the National Defense University, or the Department of Defense.

This document is the property of the United States Government and is not to be reproduced in whole or in part for distribution outside the federal executive branch without permission of the Director of Research and Publications, Industrial College of the Armed Forces, Fort Lesley J. McNair, Washington, D.C. 20319-6000.

Accession For	
NTIS GRA&I	<input checked="checked" type="checkbox"/>
DTIC TAB	<input type="checkbox"/>
Unannounced	<input type="checkbox"/>
Justification	
By	
Distribution	
Availability Codes	
Dist	Avail and/or Special
A-1	

# **ORIGINS OF THE 1986 PHILIPPINE CONSTITUTION**

## **INTRODUCTION**

The original purpose of this paper was to investigate the reasons behind the drafting of a new Philippine constitution in 1986. Actually, I was curious about the *process* the framers of the new Constitution used in creating this modern document, but my investigations led into the fascinating history of the Philippines itself. The world was painfully aware of the excesses of the Marcos regime, but most of us were at a loss as to how President Marcos remained in power for so long. We had all heard of the long period of martial law, but that was lifted in 1981, so how did he continue as president after that, and what was wrong with the previous Constitution that it allowed him to do so? And finally, does the 1986 Constitution properly address and correct the problem of excessive executive power?

Our examination will begin with a brief discussion of the political history of the Philippines.

## THE PRE-COLONIAL ERA

Long before the coming of foreign rule, the inhabitants of the archipelago now known as the Philippines lived in organized societies under varying regimes of law and political authority. Their culture was comparable to those of other lands of similar geography and climate. Families made up the basic social unit, where the authority of the father was recognized and respected. The population consisted of farmers, weavers, fishermen, hunters, and traders. They believed in a Supreme Deity. They carried on commerce and trade with each other and with neighboring islands. They accepted the concept of private property and respected the sovereignty of law and political authority.

The unit of government was the *barangay*, each independent of the other, similar to the city-states of old Greece. Although these *barangays* were barely bigger than a large neighborhood of today, their chosen leaders — normally the head of one of the largest families in the *barangay* — were quite powerful, exercising executive, legislative, judiciary, and military powers by decree. The older men of the *barangay* assisted this all-powerful executive with advice in such matters of government as making laws, trying cases, declaring war, and managing affairs with their neighbors.

Often for mutual protection, *barangays* occupying contiguous territories would form

confederations, the forerunners of today's large *barrios* or villages. There might be a chief for the entire village, with the *barangay* rulers retaining their original powers. In certain cases, *barangay* confederations embraced fairly large territories, including an entire island or a group of islands.

The early Filipinos lived under a regime of laws, both written and unwritten. The unwritten laws were the customs and traditions passed down through the generations. According to mythology, these laws were handed down by the lawgiver Luluban. Recent archaeological findings show that the early Filipinos also had written laws. Two of these findings of codified law were the Code of Kalantiaw, bearing the date 1443, and the Maragtas Code, so called because it was found in the Maragtas, a pre-Spanish chronicle written early in the thirteenth century. A cursory study of these early laws readily reveals that they covered practically the entire spectrum of modern law, both civil and criminal. They covered family relations, property, contracts, adoption, divorce, murder, rape, perjury, etc. The predominantly Muslim areas of Mindanao and Sulu also had codified laws similar to those found in the Koran, although evidently modified to suit the prevailing customs of the region before the advent of Islam in these isles.

It is clear that pre-colonial Filipinos recognized and respected the sovereignty of law



and had well-developed legal concepts comparable to those in other lands.<sup>1</sup> Justice

Norberto Romualdez summed it up with these words:

The Filipino people even in prehistoric times, had already shown high intelligence and moral virtues; virtues and intelligence clearly manifested in their legislation, which taking into consideration the circumstances and the epoch in which it was framed, was clearly as wise, as prudent, and as humane, as those of the nations then at the head of civilization."<sup>2</sup>

## THE SPANISH ERA

Continuing with her colonial expansion, Spain took control over many islands in 1521, claiming title over them under the law of nations of the time. Spain named these islands *Los Islas Filipinas*, after their reigning King Philip.

Well versed in the skills and pitfalls of occupation and colonization of new territories, Spain studiously avoided interfering with the customs and traditions of the natives. Spain preserved the *barangay* system, converting the *barangays* into townships (*pueblos*) and placing them under authority of the Governor appointed by the King of Spain.

---

<sup>1</sup> Aurego, Jose M. Barangay Government Law and Administration. Manila: University Book Supply, Inc., 1975.

<sup>2</sup> Romualdez, N.: Pre-historic Legislation of the Philippines, Philippine Law Journal, (November, 1914), page 179, quoted in George A. Malcolm's The Government of the Philippine Islands (Manila, 1916), page 44.

In the early years of the colonial period, Spain instituted the *encomienda* system, similar to the feudal system of old, primarily to reward Spaniards who had rendered service in the conquest of the Philippines. The *encomiendas* were large parcels of land including its inhabitants and resources. The *encomendero*, or owner of the *encomienda*, ruled over the inhabitants and kept order by the execution of laws created mostly by decree.

The *encomienda* was abolished after only a few generations of generally despotic rule and replaced by a provincial system of government called the *alcaldias mayores*, headed by judicial governors. Once the colony had been divided into provinces with relatively strong local governors, the King of Spain, with the approval of his Council of Ministers, established a unitary system of government by naming a Governor General. After 1822, the men appointed for this important colonial position were, as a rule, members of the army.

The powers and functions of the Governor General remained much the same until the end of Spanish rule. They could be divided into three categories:

- direct delegate of the home government in Spain
- chief of the administration
- head of military and naval forces

Following the examples of the French, Dutch, and English colonial systems of concentrating executive authority in a single person, but subject to counsel of expert advisors, Spain, by the Royal Decree of 1850, created the Board of Authorities. The Council of Administration was created by a similar decree in 1861. The Board of Authorities was in fact the Governor's cabinet. The main functions of the Council of Administration were to consider general budget matters, changes in regulations or reforms which the Governor General might propose to the home government, and all other matters which the Governor General might wish to submit for consideration. The council's decisions were by no means final, however, for they were subject to the approval of the Governor General.

For administrative purposes, the Philippines was divided into geographical units called provinces - and these, further divided into municipalities. Up until 1886, these provinces were under the control of a functionary known as an *alcalde-mayor*. After that, and the institution of a Civil Governor, the judicial functions of the former position were transferred to the newly created provincial courts. The Governor, as well as other major officials of the provinces, was appointed by the home government.

The Provincial Governor, possessing executive powers, was a major link in the central government concept imposed by Spain. Although appointed and removed by royal decrees issuing from the Minister of Colonies back in Spain, he was directly

responsible to the Governor General in Manila. This made him the medium for bringing home to the inhabitants of his province the almost boundless powers of the Governor General. As the representative of the central government, the Provincial Governor performed the following functions:

- publish and execute the laws, decrees and orders of the Governor General
- suppress and punish acts contrary to religious or public morals
- serve as commander in chief of the provincial civil guard
- preside over meetings of the provincial council and over mayoral elections
- promote use of and instruction in the Spanish language
- propose and administer provincial budgets

It seems clear that Spain did much to contribute to the constitutional development of the Philippines. Specifically, the following were fundamental changes imposed under Spanish rule:

- the creation of towns and provinces as political units
- the development of a centralized system of government that superseded tribal organizations
- the spread of Christianity among the inhabitants
- the gradual molding of a sense of unity among the formerly diverse populace into the Filipino nation
- the establishment of a judiciary system with a Supreme Court in Manila

- the development of the concepts of a national head of government (Governor General), national advisory bodies, provincial and municipal executives, and of popular representation, albeit only at the local level.

However, except for short periods, the Philippine Islands were never extended the direct benefits of the Spanish Constitution, as was done for Cuba and Puerto Rico.

Pursuant to Article 89 of the Spanish Constitution of 1837, the Philippine Islands were subject to special and separate laws.<sup>3</sup>

### **THE REVOLUTIONARY ERA**

The opening of the Suez Canal in 1869 brought the Philippines closer to Europe.

Filipinos returning from European universities or business trips brought back liberal ideas, which - through their encouragement - gradually fostered the spirit of Philippine nationalism among the intelligentsia and a growing middle class. By the end of the century, the masses had picked up on the debate and were demanding, through political insurrection, independence from Spain.

The insurrections were the result of a strong desire for political reforms, for a more

---

<sup>3</sup> Aruego Jose M. Barangay Government and Administration. Manila: University Book Supply, Inc., 1975.

liberal government, and for a guarantee of fundamental human rights. Mabini's *La Revolucion Filipina* of 1898 demanded "laws limiting the power of the Governor General, extending Filipino individual liberties through recognition in the Spanish Constitution, granting Filipino representation in the Spanish *Cortes*, and establishing a system of competitive examinations for civil servants of the colonial government."

The framing and adoption of the Malolos Constitution climaxed these revolutionary efforts. The Malolos Congress <sup>4</sup> drafted and approved its own work on November 29, 1898. In a bold move, Governor General Aguinaldo accepted and adopted the new constitution on January 21, 1899. He ordered that the new constitution should be "kept, complied with, and executed in all its parts because it is the will of the Filipino people."

The Malolos Constitution was the result of several attempts at constitution making. Most were patterned after other constitutions, such as the revolutionary Constitution of Cuba. The constitutions of France, Belgium, Mexico, Brazil, Nicaragua, Costa Rica, Chile, and Spain were studied in detail and had a molding influence on the framers. Familiarity with Spanish institutions must have provided the dominating influence, for no mention of the American Constitution appears in the literature of the period.

---

<sup>4</sup> So named after the ranking member of the Congress.

## **THE AMERICAN ERA**

After over 300 years as colonial masters of the Philippines, and a widespread revolt against their rule in 1896-97, Spain ceded the Philippines to the USA at the December 10, 1898 Treaty of Paris and the conclusion of the Spanish-American War. The fight for independence continued in the Filipino-American War (1899-1902), which ended with the imposition of American rule.

A change from Spanish constitutional principles to American principles came mainly from executive orders of the President of the United States, Acts of the American Congress or the Philippine Legislature, and decisions of the Philippine Supreme Court. The Court led the way in establishing a doctrine of supremacy of the (American) constitution in their legal system through many rulings during the American Era. Time and again the Court held that an act of the lawmaking body or of the executive was null and void, or of no effect, when it contravened a provision of a (U.S) Congressional law or of the United States Constitution.

In various other decisions, the same tribunal laid down the doctrine that the government of the Philippines, like that of the United States, was essentially one of limited powers; that whatever power had not been given to the government was deemed reserved in the sovereign. At the time, the source of legal sovereignty was the

Congress of the United States.

The organic laws — the Philippine Bill of 1902 and the Philippine Autonomy Act of 1916 (Jones Law) — did not expressly provide for the separation of powers.

However, in various decisions, the Philippine Supreme Court held that this principle had been extended to the Philippines. In 1910, in the case of the *United States vs. Bull* (15 Phil. 7), it said:

Within the limits of its authority the Government of the Philippines is a complete governmental organism with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments. The President and Congress framed the government on the model with which Americans are familiar and which has proven best adapted for the advancement of the public interests and the protection of individual rights and privileges.

In instituting this form of government the intention must have been to adopt the general constitutional doctrines which are inherent in the system. Hence, under it the Legislature must enact laws subject to the limitation to the organic laws, as Congress must act under the national constitution. The executive must execute such laws as are constitutionally enacted. The judiciary, as in all governments operating under written constitutions, must determine the validity of legislative enactments, as well as the legality of all private and official acts. In performing these functions it acts with the same independence as the Federal and State judiciaries in the United States. Under no other constitutional theory could there be that government of laws and not of men which is essential for the protection of rights under a free and orderly government.

The independence of the judiciary as part of the separation of powers was repeatedly declared by the Supreme Court of the Philippines to have been extended to the



Philippines. Referring to it, the Supreme Court in the case of *Borromeo vs. Mariano*, (41 Phil.332), said:

Since the early days of the Republic, the judicial system in the United States, with certain exceptions which only served to demonstrate more fully the excellence of the whole, has been viewed with pride, and confidently relied upon for justice by the American people. The American people considered it necessary that there should be a judiciary endowed with substantial and independent powers and secure against all corrupting or perverting influences; secure also, against the arbitrary authority of the administrative heads of the government. It was such a conception of an independent judiciary which was instituted in the Philippines by the American Administration and which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.

In his instructions to the Philippines Commission,<sup>5</sup> President McKinley insisted that all municipal officials were to be selected by popular vote. Additionally, the Philippine Bill of 1902 provided for the popular election of the members of the Philippine Assembly. Congress authorized in the Philippines Autonomy Act of 1916 the election by the people of the members of the House of Representatives and the Philippine Senate. The doctrine of popular election, and inferentially of the sovereignty of the people, gradually became more extensive in its application and more deeply entrenched in Philippine political thought.

---

<sup>5</sup> A group of Americans appointed to be commissioners serving in the Philippine government.

It was evident that the Philippine Bill of 1902 and the Philippine Autonomy Act of 1916 produced in the Congress of the United States would establish American patterns of government. Among them are a bill of rights; the presidential system; a popularly elected lawmaking body and a national executive, with the powers and privileges given in the American constitutional system. <sup>6</sup>

Each of the above mentioned acts of the U.S. Congress provided for a bill of rights, with contents more or less the same as those of American state constitutions and those of the first ten amendments to the United States Federal Constitution.

The Philippine Bill of 1902 vested legislative power in the Philippine Commission, the members of which to be appointed by the President of the United States. In 1907, it was vested in a bicameral legislature consisting of the Commission and the Philippine Assembly. The Assembly was composed of 81 members elected for a term of two years.

Under the Jones Law of 1916, legislative power was vested in the Philippine Legislature composed of the Senate and the House of Representatives. The Senate was composed of 24 members representing 12 senatorial districts. With the exception of

---

<sup>6</sup> Abueva, J.V. "Filipino democracy and the American legacy," Annals of the American Academy of Political and Social Science. 428 (November 1976), 113-114.

two who were appointed by the American Governor General to represent non-Christian tribes, all were elected to six year terms. In the House, the Governor General appointed nine members for the same reason mentioned above and the remainder were elected for three year terms by the electorate of the respective representative districts.

### **COMMONWEALTH PERIOD**

The American people and the Congress of the United States long wanted to grant independence to our first and only experiment in colonialism. In 1934, as a prelude to independence, the Tydings-McDuffie Law authorized the Philippine Legislature to call a Constitutional Convention to draft a new constitution. There were no limitations upon the powers of this convention save the significant requirements that the new constitution should be republican in form, should contain a bill of rights, and should be effective upon the withdrawal of American sovereignty. The convention had the choice of drafting an interim constitution covering the transition period of ten years or a permanent constitution for the coming Republic of the Philippines.

The convention chose the latter route, including an ordinance containing the mandatory provisions of the Tydings-McDuffie Law. This allowed the drafters to formulate a binding constitution and satisfy the requirements for the mandated ten-year

commonwealth period. Although beset with temptations to engage in political theorizing and debate over institutional experimentation and to be original in thought, the convention delegates opted for a more conservative route. The drafters believed that, "in order to be stable and permanent, the constitution must be moored to the experiences of the people, providing for institutions which had been the natural outgrowths of the national life. It held that for a people already politically organized, with political institutions of their own already developed, buttressed with national traditions, the Constitution was not a place for venturing experiments." <sup>7</sup>

Accordingly, the institutions and philosophies of the Constitution were, generally speaking, those with which almost every Filipino was familiar. The Convention delegates drew heavily from the laws under which they had been governed for the preceding three and a half decades, particularly the Jones Law enacted by the U.S. Congress in 1916. Where Philippine precedents were lacking, the drafters looked first for precedents of American origin, for they would more easily be incorporated into this new political system.

But while the dominating influence was American, the 1935 Constitution bears traces of the Malolos Constitution of the ephemeral Philippine Republic, the German

---

<sup>7</sup> Fernandez, Perfecto V.; Melo, Jose A.R.; Garcia, Cancio G.; Alday, Aloysius C. A Study of the Philippine Constitution. Quezon City: JMC Press, 1974.

Constitution, the Constitution of the Republic of Spain, the Mexican Constitution, the constitutions of several South American countries, and the unwritten English Constitution — all of which were frequently consulted during the Convention.<sup>8</sup> The 1934 Constitutional Convention, however, included in the 1935 Constitution several provisions that were relatively new. Among them were the following:

*Preamble* — Unlike the organic laws in effect, the new Constitution provided for a preamble.

*National Territory* — Drawing from the example of the Mexican Constitution, the new Constitution defined the National Territory of the Philippines.

*Bill of Rights* — Basically the same as those of the United States, but with some new provisions.

*Declaration of Principles* — Unlike the American Constitution, but like some of the new Constitutions in Europe, the new Constitution provided for a declaration of principles, two of which were the adoption of social justice and the renunciation of war as an instrument of national policy.

*Suffrage* — Unlike many other constitutions, the new Constitution provided for qualifications for suffrage.

*Legislative contest* — Departing once again from the American Constitution, wherein the legislatures are the sole judges of contests relating to the election, returns, and qualifications of their members, the new Constitution provided for a new body known as the Electoral Commission, composed of three justices of the Supreme Court and six members chosen by the lawmaking body, three from the ruling party and three from the party having the second largest number of votes in the Assembly.

*Executive budget* — Quite unlike most other constitutions, the new

---

<sup>8</sup> Ibid.

Constitution did not provide authorization for the lawmaking body to act on recommendations from the executive branch on budget appropriations to run the executive branch of the government.

*Executive veto of items of revenue and appropriations* — The new constitution provided for an executive **line item veto** for separate items in proposed appropriation, revenue, or tariff measures.

*Filipinization of natural resources* — Like the constitutions of Mexico and Spain, the new Philippine Constitution provided for the nationalization of natural resources and public utilities.

*Elective national executive* — Similar to some European constitutions and to American state constitutions, the new Constitution provided for the direct election of the executive by popular vote.

In general a considerable portion of the ideas and institutions of the 1935 Philippine Constitution were adopted from the American Constitution, and partly on the Constitutions of some European countries. The remainder could be said to be original with the Philippines.

### **SEMI-COLONIAL RULE 1935-1946**

The American Era, beginning in 1902, ushered in a period of substantial economic progress, stimulated by free trade with the USA, preferential treatment for Philippine agricultural exports and US investment which naturally followed. US suzerainty was interrupted by three years of Japanese occupation during the Second World War (1941-

1944), but the restoration of US rule was short-lived and the independent Republic of the Philippines was inaugurated in 1946. It retained close links with the USA, with the continuance until 1974 of preferential trade and parity rights for US citizens. The 1935 Constitution remained the operative document for years to come.

### **THE MARCOS ERA**

The 1935 Constitution was abruptly overturned in September 1972 as President Ferdinand Marcos neared the end of his second term. Citing a threat from "subversive forces," he imposed martial law under the provisions of the 1935 Constitution, which lasted until January 1981. In a bid to extend his influence and remain in office, Marcos appointed a commission to formulate a new constitution. On January 10, 1973, the new Constitution was approved by the Filipino electorate in a national referendum. One week later, President Marcos declared that it would go into effect immediately. It had been the intention of the framers of this Constitution to establish a parliamentary system of government. However, there was to be a transition period during which time the foundations were to be laid for the transformation from a presidential to a parliamentary system.

Section 1 of the Transitory Provisions stipulated that:

There shall be an interim National Assembly which shall exist immediately upon the ratification of the Constitution and shall continue until the Members of the regular National Assembly have been elected and shall have assumed office following an election called for the purpose by the interim National Assembly.

Also, Section 3(1) of the Transitory Provisions stated that:

The incumbent President of the Philippines shall initially convene the Interim National Assembly and shall preside over its sessions until the interim Speaker shall have been elected. He shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution until he calls upon the interim National Assembly to elect the interim President and the interim Prime Minister, who shall then exercise their respective powers vested by this Constitution.

The situation was far from normal. It was left to President Marcos to decide when the Interim National Assembly would convene. President Marcos was still governing under martial law, which he had instituted on September 21, 1972. And he was exercising legislative powers through presidential proclamations orders, and decrees.

Section 3(2) of the Transitory Provisions of the 1973 Constitution stipulated that:

All proclamations, orders, decrees, instructions, and acts promulgated or issued by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly.



Obviously, under martial law and the transitory provisions of the 1973 Constitution, President Marcos was endowed with enormous powers. However, there appeared to be a check on his authority by means of the courts. The constitutional basis for this was provided by Section 4 of the Transitory provisions which stated that:

All courts existing at the time of the ratification of this Constitution shall continue and exercise their jurisdiction, until otherwise provided by law in accordance with this Constitution, and all cases pending in said courts shall be heard, tried, and determined under the laws then in force. The provisions of the existing Rules of Court not inconsistent with this Constitution shall remain operative unless amended, modified, or repealed by the Supreme Court of the National Assembly.

The role of the courts and especially the Supreme Court during this extraordinary period, is therefore of the greatest importance. Early in 1973 there were many prominent individuals who questioned the constitutionality of the procedure which had been followed in bringing about the referendum.

President Marcos was urged to end martial law and restore civil liberties in a petition submitted to him by Roman Catholic bishops made public September 1, 1974. The petition requested that "...bold steps be taken to gradually lift martial law and thus pave the way for healing the wounds of the nation." It also questioned the Philippine economic policy and asked for the restoration of freedom of speech and press.

In a worldwide satellite press conference on September 30, 1974, President Marcos stated:

Of course the problem here is, if you say that martial law leads to democracy, how long are you going to maintain martial law? I say again, only as long as necessary. As the constitutionalists put it, necessity gave life to martial law and martial law cannot continue unless necessity allows it to live.

Addressing the nation on December 11, 1974 President Marcos enumerated:

...seven major threats to the Republic...the leftist rebellion; the rightist conspiracy, which included plans for a *coup d'état*; the secessionist movement on Mindinao and Sulu; the criminal syndicates and political warlords with their private armies; the deteriorating economy; corruption on all levels; and the oppressive oligarchy which was responsible for and bent on promoting widespread social injustice.

He also warned of the dangers of "worldwide inflation and the threat of recession." <sup>9</sup>

In response to a proposed national referendum, On March 31, 1973, the Supreme Court dismissed the case of *Javellana vs. Executive Secretary* whereby the petitioners sought to prevent executive officials from implementing the provisions of the new Constitution on the ground that it had not been validly ratified and that it had not (in effect) come into force. Chief Justice Fred Ruiz Castro wrote the following comments in answer to the important questions raised by this action:

The net result was a holding that the question whether the new Constitution has come into force and effect is a political question beyond

---

<sup>9</sup> Republic of the Philippines, Official Gazette 70, December 23, 1974.

the competence of the Supreme Court to decide. Consequently, the challenge to its validity must fail, with the result that, in the language of the resolution, 'there is no further judicial obstacle to the Constitution being considered in force and effect.'

The dismissal of the petitions follows from the premise that the decisive question tendered was political, while the statement that 'there is no further judicial obstacle to the Constitution being considered in force and effect' is a logical consequence of the dismissal of the petitions which sought to enjoin the enforcement of the Constitution.

The Court thus abstained from judgment on the ultimate question of constitutionality. But its disposition of the cases was no less a decision. To hold that the question tendered was a political question was itself an interpretive process that called for the exercise of judgment. Ironically, the Philippine Court referred to *Baker vs. Carr*, 369 U.S. 186, 1962, in which Justice Brennan cites Justice Brandeis' words, "the most important thing we (the Supreme Court) decide is what not to decide."

In April 1978 the first elections under martial law were held, and, despite its criticism of government restrictions, a substantial segment of the opposition participated. Predictably, President Marcos' New Society movement (KBL) won overwhelmingly. Of the interim assembly of 200 members, only 15 seats were won by the opposition. The assembly comprised 165 elected representatives from 14 electoral regions, with other members appointed by the president.

In January 1980 local elections were held, at which the KBL had a sweeping victory, gaining even more support than in the 1978 elections. At the same time convincing charges of cheating were made by the opposition. In January 1981 President Marcos lifted martial law (for most parts of the country), but he could in effect use martial law powers as he considered necessary.

To solve the uncertainty about succession, amendments to the constitution were approved by plebescite in April 1981. These replaced the parliamentary form with a mixed presidential/parliamentary government and, most significantly, provided for an executive committee to take over from the president should the need arise and until another president was elected. In theory this dealt with the problem of succession but uncertainty continued as to who could command the support necessary to succeed President Marcos.

A national referendum was held on July 27-28, 1973 on the question: "Do you want President Marcos to continue in office beyond 1973 and to complete the reforms he has initiated under Martial Law?" The popular vote overwhelmingly supported Mr. Marcos by an affirmative response of approximately 90% with almost 20 million voting. President Marcos later declared that "martial law should have been legally terminated on January 17, 1973 when the New Constitution was ratified (but) the popular clamor manifested in the referendum (was) that the National Assembly be

temporarily suspended."

In June 1981 President Marcos was elected for a six year term by an overwhelming majority (88 percent), with the opposition refusing to participate. Many opposition politicians continued in detention or voluntary exile and, with the media censored, the moderate opposition seemed unable to mobilize feeling against the administration and its abuses. The only effective opposition came from the Communist New People's Army (NPA), active in rural areas, and from the southern areas where a secessionist Muslim movement had been active since before the beginning of martial law.

Regional assembly elections held in May 1979, in line with government proposals, were boycotted by most of the Muslim population. Meanwhile, the NPA extended its operations from Luzon and Samar to the south - in particular the Davao provinces - and was estimated to have 12,000 - 15,000 regular and another 10,000 part time militia by the end of 1985.

The situation changed rapidly in August 1983, when Benigno Aquino, the opposition leader regarded as the most credible alternative to President Marcos, was assassinated while under military escort immediately after his return from exile in the US. This event, and the deep and widely held suspicion that top levels of the government and military had ordered the assassination, galvanized the non-violent opposition to the regime. A series of massive demonstrations followed in which the disenchantment of

the urban middle class, and notably the business community, was expressed for the first time.

This disenchantment owed much to the "crony" system - the granting of massive privileges (such as monopoly control over coconut and sugar marketing) to individuals whose qualifications were largely based on their closeness and devotion to the interests of the Marcos family. This system was permeated by corruption at all levels, and the gross economic inefficiency and waste it entailed (long evident to both domestic and foreign observers) became even more undesirable as the Philippines' payments situation moved into deep crisis.

Marcos' contention that Aquino's assassination was a lone gunman in communist pay was contradicted in the hearings of the commission of inquiry into the event, and the suspicion that Marcos had not been fully in control at the time, because of poor health, reinforced the demand for some more secure and open mechanism for succession than that provided by the executive committee. Bowing to pressure from inside his own party as well as from external creditors, President Marcos restored the office of elected vice president as from the next presidential election (then due in 1987), with the speaker of the National Assembly to be interim president should Marcos be removed before that date. Moreover, significant changes were made in the set up for the legislative elections in May 1984, which were designed to make the contest less

grossly one sided - for example, by basing the election on local areas rather than regions and the results more credible abroad (notably in the USA). However, there were well authenticated reports of vote buying and tampering with ballot boxes and a very long delay (over a week) in compiling the result. But the opposition nevertheless did well, winning 63 of the 183 seats in contention, despite the well entrenched and well financed KBL party organization at grass roots and the split within the opposition ranks between those supporting participation in the elections (however distorted the process) and those urging a boycott.

The strength of anti-Marcos feeling was sustained by the results of the enquiry. This reported that military forces were responsible for the assassination of Aquino and the attempted cover-up. The majority (i.e., all members except the commission's head) named Fabian Ver, the armed forces chief of staff, head of the intelligence service, and close aide of the President, plus 25 others. The head of the commission named only seven, led by the chief of security command at the airport. After an initial attempt to treat the less damaging report as the operative one, Marcos (under pressure from Washington) allowed proceedings to begin against General Ver and the other accused. However, there was widespread suspicion that the whole exercise was designed to clear General Ver and permit him to resume his functions as chief of staff. This was borne out by Ver's acquittal in December 1985. Because of the verdict's lack of credibility, it only reinforced the general swell of opposition.

To reassert his supremacy, and to counter pressure from Washington, President Marcos called an early election for February 1986. He assumed he would easily prevail. He had advantages stemming from two decades of autocratic rule, with access to funds and the media, while the opposition had still to unite behind one candidate, with less than two months to prepare for the poll.

### **PEOPLE POWER - THE AQUINO ERA**

Marcos did not miscalculate on the workings of the government electoral machine; he was declared winner by about 1.5 million votes. But he had miscalculated on other critical points. He underestimated the drawing power of Corazon (Cory) Aquino, widow of Benigno Aquino, who united the previously disparate moderate opposition and, with her calls for peaceful reform, drew the total support of the Roman Catholic Church. Marcos also underestimated the effect of US public opinion informed by detailed press coverage of the realities of Philippine elections — the massive disenfranchisement (of up to 3 million voters) in opposition strongholds, the blatant rigging of the court, and the widespread intimidation of the electorate. And finally he overestimated his own hold on the Philippines. His claim to be victor was rejected — first by the opposition, second by Washington, and finally by a section of the armed forces led by the defence minister, Juan Ponce Enrile, and by the deputy chief of staff,



General Fidel Ramos. Their mutiny in support of Aquino's claim to be president was backed by the civilian population in Manila which, at the behest of the head of the Catholic Church, Cardinal Jaime Sin, came out on the streets to shield the rebels. Troops and armor sent to capture the rebel stronghold turned back when faced with thousands of unarmed civilians. With his stronghold over the armed forces eroding by the hour and with final confirmation that he could not look to President Reagan for more than an offer of asylum, and that only if he went without a fight, Marcos yielded. He flew to exile in Hawaii, where he remained until his death in 1989. He did not specifically yield the presidency to Corazon Aquino, but the legitimacy of her succession was not contested even by many of the former supporters of Marcos.

President Aquino then sought to reunite the country. Following campaign pledges, civil liberties were restored, political prisoners were released, and the NPA was offered a six month cease fire, with negotiations on grievances, in return for surrendering its arms. Cory's regime wished to maintain fundamental social structures and the system of government, at least in its broad terms. However, the fact of having come to power through a military revolt and the forced departure of a proclaimed elected president meant that the Aquino government's claim to legality was suspect under the existing constitution, and the new regime could not constitutionally remove established governors and mayors. Consequently, President Aquino proclaimed a transitional constitution in March 1986 to last for one year while a permanent constitution was

drafted by a special commission. The transitional constitution maintained many provisions of the old one, including in rewritten form the presidential right to rule by decree. A permanent constitution was drawn up in summer 1986 in a constitutional convention whose members were appointed by the president. It largely restored the set-up abolished by Marcos in 1972, but with new controls on the president based on the experience of Marcos rule.

The presidential term is a single one of six years (thus Aquino's term lasted until mid-1992). The president may impose martial law for no longer than 60 days, and the decree proclaiming it can be revoked by Congress. The president may not abolish Congress. The judiciary rules on the constitutionality of presidential decrees, and there is a new procedure to secure impartial appointments. A permanent independent commission oversees compliance with an expanded bill of rights.

The new constitution was overwhelmingly approved (with a 76 per cent majority in an 87 per cent turnout) in February 1987, and congressional elections were held the following May. The 1986 Constitution was upheld throughout President Aquino's tumultuous six years in office and a peaceful (by Philippine standards) turnover occurred following the 1992 presidential elections.

## CONCLUSION

The message delivered here has been long, but its conclusion is quite clear — After more than 300 years of monastic rule by the Spaniards, a half-century of Hollywood, and nearly a quarter-century of home-grown megalomania with Marcos, the Philippines developed a functional democracy embodied in the 1986 Constitution.

The results were inextricably tied to their culture and adopted Christianity. They were long used to the idea of the sovereignty of law and central government. Christianity added the ideals of fair play and higher purpose. The practice of sending scholars to Europe, and later to America, helped to develop liberal ideas and a deeper understanding of the principles of democracy. The 1935 Constitution could have been in existence today, were it not for the excesses of the Marcos years. Those excesses, coupled with the increased political awareness of an ever growing educated middle class, finally fomented enough dissatisfaction that one final change was inevitable. Marcos and wife actually helped things along by their outright corruption and arrogant behavior. It may take decades for the Philippines to recover from the economic and social losses incurred during its recent history, but as it is blessed with a resilient population enjoying a new era of political freedom based on social consciousness, I have no doubts that they will prevail.